

GENERAL ASSEMBLY OF NORTH CAROLINA
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BILL DRAFT 2005-SBz-27 [v.6] (04/27)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
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Short Title: Amend Interbasin Transfer Laws.

(Public)

Sponsors: .

Referred to:

A BILL TO BE ENTITLED
AN ACT TO AMEND THE STATUTE GOVERNING THE REGULATION OF
INTERBASIN TRANSFERS, AS RECOMMENDED BY THE
ENVIRONMENTAL REVIEW COMMISSION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 143-215.22G is amended by adding a new subdivision to read:

"(1a) “Safe yield” means the amount of water that can be continuously withdrawn from a source water body without adverse effects to water quality and aquatic habitat during 7Q10 conditions, as defined in G.S. 130A-295.01.”

SECTION 2. G.S. 143-215.22I reads as rewritten:

"§ 143-215.22I. Regulation of surface water transfers.

(a) No person, without first securing a certificate from the Commission, may:

- (1) Initiate a transfer of 2,000,000 gallons of water or more per day from one river basin to another.
- (2) Increase the amount of an existing transfer of water from one river basin to another by twenty-five percent (25%) or more above the average daily amount transferred during the year ending July 1, 1993, if the total transfer including the increase is 2,000,000 gallons or more per day.
- (3) Increase an existing transfer of water from one river basin to another above the amount approved by the Commission in a certificate issued under G.S. 162A-7 prior to July 1, 1993.

(b) Notwithstanding the provisions of subsection (a) of this section, a certificate shall not be required to transfer water from one river basin to another up to the full

1 capacity of a facility to transfer water from one basin to another if the facility was
2 existing or under construction on July 1, 1993.

3 (c) An applicant for a certificate shall petition the Commission for the certificate.
4 The petition shall be in writing and shall include the following:

5 (1) A description of the facilities to be used to transfer the water, including
6 the location and capacity of water intakes, pumps, pipelines, and other
7 facilities.

8 (2) A description of the proposed uses of the water to be transferred.

9 (3) ~~The~~ To assure the efficient use of the water and the avoidance of
10 waste, the water conservation measures to be used by the applicant at
11 the time of application and any additional water conservation measures
12 that will be implemented by the applicant if the certificate is granted.
13 ~~to assure efficient use of the water and avoidance of waste.~~

14 (4) The applicant's water supply plan and 25-year population projections,
15 as appropriate.

16 (5) An itemized report detailing the source, volume, and maximum
17 permitted capacity of all existing water withdrawals and interbasin
18 transfers from the source river basin.

19 (6) A determination of whether the proposed interbasin transfer and
20 existing, permitted, and other proposed withdrawals are within the safe
21 yield of the source water body.

22 (7) A letter of support from each downstream public water supplier,
23 including each water supplier in downstream states, that make
24 withdrawals from the source water body stating that the proposed
25 interbasin transfer will not negatively affect existing water users and is
26 consistent with local water supply plans.

27 (8) The most recent information available from the Division of Water
28 Quality of the Department concerning the water quality of the source
29 river basin and the receiving river basin.

30 (9) The most recent information available from the Wildlife Resources
31 Commission concerning aquatic habitat for rare, threatened, and
32 endangered species in the source river basin and the receiving river
33 basin.

34 (4)(10) Any other information deemed necessary by the Commission for
35 review of the proposed water transfer.

36 (d) Upon receipt of the petition, the Commission shall hold a public hearing on
37 the proposed transfer after giving at least 30 days' written notice of the hearing as
38 follows:

39 (1) By publishing notice in the North Carolina Register.

40 (2) By publishing notice in a newspaper of general circulation in the ~~area~~
41 areas of the river basin that withdraw water from the source water
42 body downstream from the point of the proposed withdrawal.

43 (3) By giving notice by first-class mail to each of the following:

- a. A person who has registered under this Part a water withdrawal or transfer from the same river basin where the water for the proposed transfer would be withdrawn.
- b. A person who secured a certificate under this Part for a water transfer from the same river basin where the water for the proposed transfer would be withdrawn.
- c. A person holding a National Pollutant Discharge Elimination System (NPDES) wastewater discharge permit exceeding 100,000 gallons per day for a discharge located downstream from the proposed withdrawal point of the proposed transfer.
- d. The board of county commissioners of each county that is located entirely or partially within the river basin that is the source of the proposed transfer.
- e. The governing body of any public water supply system that withdraws water downstream from the withdrawal point of the proposed transfer.

(e) The notice of the public hearing shall include a nontechnical description of the applicant's request and a conspicuous statement in bold type as to the effects of the water transfer on the source and receiving river basins. The notice shall further indicate the procedure to be followed by anyone wishing to submit comments on the proposed water transfer.

(f) In determining whether a certificate may be issued for the transfer, the Commission shall specifically consider each of the following items and state in writing its findings of fact with regard to each item:

- (1) The necessity, reasonableness, and beneficial effects of the amount of surface water proposed to be transferred and its proposed uses.
- (2) The present and reasonably foreseeable future detrimental effects on the source river basin, including present and future effects on public, industrial, and agricultural water supply needs, wastewater assimilation, water quality, fish and wildlife habitat, hydroelectric power generation, navigation, and recreation. Local water supply plans that affect the source major river basin shall be used to evaluate the projected future municipal water needs in the source major river basin. basin, basin and to determine whether the proposed interbasin transfer will have a detrimental impact on the future water supplies of local governments that make withdrawals from the source water body.
- (2a) The cumulative effect on the source major river basin of any water transfer or consumptive water use that, at the time the Commission considers the application for a certificate is occurring, is authorized under this section, or is projected in any local water supply plan that has been submitted to the Department in accordance with G.S. 143-355(l).

- 1 (3) The detrimental effects on the receiving river basin, including effects
2 on water quality, wastewater assimilation, fish and wildlife habitat,
3 including wetlands, navigation, recreation, and flooding.
- 4 (4) Reasonable alternatives to the proposed transfer, including their
5 probable costs, and environmental impacts.
- 6 (5) If applicable to the proposed project, the applicant's present and
7 proposed use of impoundment storage capacity to store water during
8 high-flow periods for use during low-flow periods and the applicant's
9 right of withdrawal under G.S. 143-215.44 through G.S. 143-215.50.
- 10 (6) If the water to be withdrawn or transferred is stored in a multipurpose
11 reservoir constructed by the United States Army Corps of Engineers,
12 the purposes and water storage allocations established for the reservoir
13 at the time the reservoir was authorized by the Congress of the United
14 States.
- 15 (7) Any other facts and circumstances that are reasonably necessary to
16 carry out the purposes of this Part.

17 (f1) An environmental assessment as defined by G.S. 113A-9(1) shall be prepared
18 for any petition for a certificate under this section. The determination of whether an
19 environmental impact statement shall also be required shall be made in accordance with
20 the provisions of Article 1 of Chapter 113A of the General Statutes. The applicant who
21 petitions the Commission for a certificate under this section shall pay the cost of special
22 studies necessary to comply with Article 1 of Chapter 113A of the General Statutes.
23 The environmental assessment or environmental impact statement shall include an
24 evaluation of the applicant's ability to meet the applicant's water supply needs from
25 sources that do not require an interbasin transfer and through the use of water
26 conservation measures. The environmental assessment or environmental impact
27 statement shall include an evaluation of measures to mitigate any damage that may arise
28 from the proposed interbasin transfer. The environmental assessment or environmental
29 impact statement shall be completed and made available to the public at least 30 days
30 before the public hearing required by subsection (d) of this section.

31 (g) A certificate shall be granted for a water transfer if the proposed interbasin
32 transfer will not supply more than five percent (5%) of the water used by the applicant
33 and the applicant establishes and the Commission concludes by a preponderance of the
34 evidence based upon the findings of fact made under subsection (f) of this section that:
35 (i) the benefits of the proposed transfer outweigh the detriments of the proposed
36 transfer, and (ii) the detriments have been or will be mitigated to a reasonable degree.
37 The conditions necessary to ensure that the detriments are and continue to be mitigated
38 to a reasonable degree shall be attached to the certificate in accordance with subsection
39 (h) of this section.

40 (h) The Commission may grant the certificate in whole or in part, or deny the
41 certificate. The Commission may also grant a certificate with any conditions attached
42 that the Commission believes are necessary to achieve the purposes of this Part. The
43 conditions may include mitigation measures proposed to minimize any detrimental
44 effects of the proposed transfer and measures to protect the availability of water in the

1 source river basin during a drought or other emergency. The certificate shall include a
2 drought management plan that specifies how the transfer shall be managed to protect the
3 source river basin during drought conditions. The certificate shall indicate the maximum
4 amount of water that may be transferred. No person shall transfer an amount of water
5 that exceeds the amount in the certificate.

6 (i) In cases where an applicant requests approval to increase a transfer that
7 existed on July 1, 1993, the Commission shall have authority to approve or disapprove
8 only the amount of the increase. If the Commission approves the increase, however, the
9 certificate shall be issued for the amount of the existing transfer plus the requested
10 increase. Certificates for transfers approved by the Commission under G.S. 162A-7
11 shall remain in effect as approved by the Commission and shall have the same effect as
12 a certificate issued under this Part.

13 (j) In the case of water supply problems caused by drought, a pollution incident,
14 temporary failure of a water plant, or any other temporary condition in which the public
15 health requires a transfer of water, the Secretary of Environment and Natural Resources
16 may grant approval for a temporary transfer. Prior to approving a temporary transfer,
17 the Secretary shall consult with those parties listed in G.S. 143-215.22I(d)(3) that are
18 likely to be affected by the proposed transfer. However, the Secretary shall not be
19 required to satisfy the public notice requirements of this section or make written
20 findings of fact and conclusions in approving a temporary transfer under this subsection.
21 If the Secretary approves a temporary transfer under this subsection, the Secretary shall
22 specify binding conditions to protect other water users. A temporary transfer shall not
23 exceed six months in duration, but the approval may be renewed for a period of six
24 months by the Secretary based on demonstrated need as set forth in this subsection. A
25 temporary transfer may be renewed no more than two times after the initial approval.

26 (k) The substantive restrictions and conditions upon surface water transfers
27 authorized in this section may be imposed pursuant to any federal law that permits the
28 State to certify, restrict, or condition any new or continuing transfers or related activities
29 licensed, relicensed, or otherwise authorized by the federal government.

30 (l) When any transfer for which a certificate was issued under this section equals
31 eighty percent (80%) of the maximum amount authorized in the certificate, the applicant
32 shall submit to the Department a detailed plan that specifies how the applicant intends to
33 address future foreseeable water needs. If the applicant is required to have a local water
34 supply plan, then this plan shall be an amendment to the local water supply plan
35 required by G.S.143-355(l). When the transfer equals ninety percent (90%) of the
36 maximum amount authorized in the certificate, the applicant shall begin implementation
37 of the plan submitted to the Department.

38 (m) It is the public policy of the State to maintain, protect, and enhance water
39 quality within North Carolina. To that end, there is a presumption that a certificate for
40 an interbasin transfer shall not be granted unless the interbasin transfer is necessary to
41 protect and promote public health and welfare. Further, it is the public policy of the
42 State that the cumulative impact of transfers from a source river basin shall not result in
43 a violation of the antidegradation policy set out in 40 Code of Federal Regulations §

1 131.12 (1 July 1997 Edition) and the statewide antidegradation policy adopted pursuant
2 thereto.

3 (n) The Commission may modify any certificate granted for an interbasin transfer
4 if the Commission determines that:

5 (1) The cumulative impact of existing, permitted, and proposed
6 withdrawals has exceeded or will exceed the safe yield of the source
7 water body;

8 (2) The cumulative impact of existing, permitted, and proposed
9 withdrawals has caused or contributed to or will cause or contribute to
10 the deterioration of water quality in either the source river basin or the
11 receiving river basin; or

12 (3) The projections of population growth, water supply, or water demand
13 upon which the certificate for the interbasin transfer was granted were
14 inaccurate."

15 **SECTION 3.** This act is effective when it becomes law and applies to any
16 petition for a certificate or for the modification of a certificate for an interbasin transfer
17 that is submitted to the Environmental Management Commission on or after that date.